

JON N. IKENAGA  
STATE PUBLIC DEFENDER

**DEFENDER COUNCIL**  
1130 NORTH NIMITZ HIGHWAY  
SUITE A-254  
HONOLULU, HAWAI'I 96817

**HONOLULU OFFICE**  
1130 NORTH NIMITZ HIGHWAY  
SUITE A-254  
HONOLULU, HAWAI'I 96817

**APPELLATE DIVISION**  
TEL. No. (808) 586-2080

**DISTRICT COURT DIVISION**  
TEL. No. (808) 586-2100

**FAMILY COURT DIVISION**  
TEL. No. (808) 586-2300

**FELONY DIVISION**  
TEL. No. (808) 586-2200

**FACSIMILE**  
(808) 586-2222



STATE OF HAWAI'I  
**OFFICE OF THE PUBLIC DEFENDER**

HAYLEY Y.C. CHENG  
ASSISTANT PUBLIC DEFENDER

**HILO OFFICE**  
275 PONAHAHAWAI STREET  
SUITE 201  
HILO, HAWAI'I 96720  
TEL. No. (808) 974-4571  
FAX No. (808) 974-4574

**KONA OFFICE**  
75-1000 HENRY STREET  
SUITE #209  
KAILUA-KONA HI 96740  
TEL. No. (808) 327-4650  
FAX No. (808) 327-4651

**KAUAI OFFICE**  
3060 EIWA STREET  
SUITE 206  
LIHUE, HAWAI'I 96766  
TEL. No. (808) 241-7128  
FAX No. (808) 274-3422

**MAU'I OFFICE**  
81 N. MARKET STREET  
WAILUKU, HAWAI'I 96793  
TEL. No. (808) 984-5018  
FAX No. (808) 984-5022

**Testimony of the Office of the Public Defender,  
State of Hawai'i to the House Committee on Judiciary & Hawaiian Affairs**

February 5, 2025

H.B. 301: RELATING TO DOMESTIC ABUSE PROTECTIVE ORDERS.

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

The Office of the Public Defender **strongly opposes H.B. 301.**

This measure increases the penalties and classifications for violations of an Order for Protection. Specifically, it elevates a second offense to a Class C Felony. It increases the mandatory minimum from 48-hours to 30-days for violations that do not involve domestic abuse type violations. It increases the mandatory minimum from 48-hours to 60-days for violations that involve domestic abuse. In addition, it increases the mandatory fines.

It is the position of the Office of the Public Defender that these modifications are excessive and unnecessary to improve the processing of these types of cases in our criminal justice system. We acknowledge that domestic violence is an ongoing issue in our communities. However, there are more effective ways to address safety concerns when working with families and domestic partners who obtain Orders for Protection. The Courts need to have the ability to craft sentences to penalize different types of violations. The Courts always take into consideration the unique facts and circumstances of each violation, whether the violation involves acts of

domestic abuse, together with the attendant circumstances, to determine an appropriate punishment.

We oppose any measure that takes individualized sentencing out of the hands of the trial judges who are in the best position to fashion an appropriate sentence in each case. A trial judge becomes intimately familiar with defendants who are found guilty of these types of offense(s) after a comprehensive review of that individual's social, family and criminal history. This review, of course, includes the defendant's criminal record or lack thereof. The review also includes details about past trauma, the need for mental health treatment, and the socio-economic impacts on an individual facing that judge for sentencing. The review may also take a look at the use of restraining orders and orders for protection as a weapon to use in a child custody or paternity battle or in a contentious divorce proceeding. We have seen instances where nefarious family members weaponize this process as a means to elder abuse, as a means to get a better advantage in a probate matter involving shared property with family members. We have also encountered couples who have "dueling" orders for protection – where both parties have obtained separate orders for protection against each other based on mutual accusations of domestic abuse.

Passage of this measure will prevent a judge from deciding the most appropriate sanction for the individual offender who is currently before them rather than to have their "hands tied" by mandatory sentencing. Mandatory sentencing will only cause more court congestion, as more cases will only be resolved by jury trials; mandatory sentencing will also contribute to jail overcrowding.

Our office is supportive of more intensive supervision, access to mental health treatment and counseling, substance abuse intervention and treatment, and domestic violence intervention programming. We are deeply concerned that the harsh nature of these amendments can create the unintended circumstance of encouraging parties to obtain restraining orders to use as a means to emotionally and financially abuse partners. We have already seen instances where a true abuser obtains and uses an order for protection as a means to harm a true victim – there by using the criminal justice system to further abuse. We respect the work of domestic violence prevention agencies, and it is not unusual for a defendant to have a counselor or service provider affiliated with these agencies.

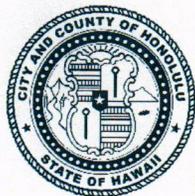
With the recent nationwide review of criminal justice policies, it is concerning that the trend in the State of Hawai'i is to increase penalties and remove judicial discretion from individualized sentencing. This is especially important when dealing with the complicated dynamic of family or household members, managing

trauma, mental illness, and rehabilitation. Many defendants are themselves victims of violence and trauma and in need of a range of serious treatment options. The courts should retain the ability to acknowledge and support defendants who are in treatment and who have a strong support system to prevent new offenses.

Thank you for the opportunity to comment on this measure.

HONOLULU POLICE DEPARTMENT  
KA 'OIHANA MĀKA'I O HONOLULU  
**CITY AND COUNTY OF HONOLULU**

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 • WEBSITE: [www.honolulu.org](http://www.honolulu.org)



RICK BLANGIARDI  
MAYOR  
MEIA

ARTHUR J. LOGAN  
CHIEF  
KAHU MĀKA'I  
  
KEITH K. HORIKAWA  
RADE K. VANIC  
DEPUTY CHIEFS  
HOPE LUNA NUI MĀKA'I

OUR REFERENCE VL-BT

February 5, 2025

The Honorable David A. Tarnas, Chair  
and Members  
Committee on Judiciary and Hawaiian Affairs  
House of Representatives  
415 South Beretania Street, Room 325  
Honolulu, Hawaii 96813

Dear Chair Tarnas and Members:

SUBJECT: House Bill No. 301, Relating to Domestic Abuse Protective Orders

I am Vince Legaspi, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 301, Relating to Domestic Abuse Protective Orders.

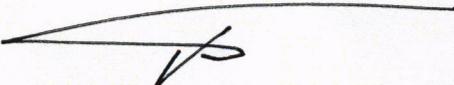
To better protect victims of domestic abuse and emphasize the seriousness of violating protective orders, it is important to recognize that a second or subsequent violations often indicates a pattern of disregard to court order and victim's safety. There are many cases where an individual repeatedly violates a protective order. This situation calls for stronger legal measures to prevent further harm. Imposing stricter penalties sends a clear message that discourages individuals from committing further violations.

The HPD urges you to support House Bill No. 301, Relating to Domestic Abuse Protective Orders. Thank you for the opportunity to testify.

APPROVED:

Sincerely,

  
\_\_\_\_\_  
702 Arthur J. Logan  
Chief of Police

  
\_\_\_\_\_  
Vince Legaspi, Captain  
Criminal Investigation Division

**KELDEN B.A. WALTJEN**  
PROSECUTING ATTORNEY

**STEPHEN L. FRYE**  
FIRST DEPUTY  
PROSECUTING ATTORNEY



655 KĪLAUEA AVENUE  
HILO, HAWAII 96720  
PH: (808) 961-0466  
FAX: (808) 961-8908

64-1067 MAMALAOHA HWY  
KAMUELA, HAWAII 96743  
PH: (808) 887-3017  
FAX: (808) 887-3016

74-675 KEALAKEHE PARKWAY  
KAILUA-KONA, HAWAII 96740  
PH: (808) 322-2552  
FAX: (808) 322-6584

## **OFFICE OF THE PROSECUTING ATTORNEY**

### **TESTIMONY IN SUPPORT OF HOUSE BILL NO. 301 WITH COMMENTS**

#### **A BILL FOR AN ACT RELATING TO DOMESTIC ABUSE PROTECTIVE ORDERS**

#### **COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS**

Representative David A. Tarnas, Chair  
Representative Mahina Poepoe, Vice Chair

Wednesday, February 5, 2025 at 2:00 p.m.  
Via Videoconference and  
State Capitol Conference Room 325  
415 South Beretania Street

Honorable Chair Tarnas, Vice-Chair Poepoe, and Members of the Committee on Judiciary and Hawaiian Affairs, the County of Hawai'i, Office of the Prosecuting Attorney submits the following testimony in support of House Bill No. 301, with comments.

House Bill No. 301 would make a second or subsequent conviction for violation of a domestic abuse protective order a class C felony offense. This bill reflects the need for increased accountability for individuals who violate protective orders issued by the family courts of our state. The County of Hawai'i, Office of the Prosecuting Attorney supports this measure to increase accountability for repeated violations.

Domestic violence protective orders are issued where the family court finds that a past act or acts of abuse may have occurred, that threats of abuse make it probable that acts of abuse may be imminent, or that extreme psychological abuse or malicious property damage is imminent. Such orders may require the subject to not contact the protected party, to not threaten, harm, or harass the protected party, to stay away from the protected party's residence or place of employment, and other measures aimed at protecting victims from ongoing threats of abuse, coercive control, or property damage.

Ongoing or repeated violations of a domestic violence protective order can have the malicious effect of making victims feel powerless. Increasing the penalty for successive violations could have a deterrent effect on violators and help assure victims.

The Office of the Prosecuting Attorney, County of Hawai'i, further adds the following comments as to possible ways to strengthen and clarify this bill:

- HB 301 could be strengthened by clarifying that a conviction for the crime of Violation of a Temporary Restraining Order, under Section 586-4, Hawai‘i Revised Statutes, may serve as a first conviction for the class C felony offense of Violation of an Order for Protection under Section 586-11, HRS, where the temporary restraining order was issued under the same judicial case number as the order for protection. An ex-parte temporary restraining order is issued by a judge on an emergency basis for the same purposes and under the same chapter as an order for protection, and a violation of either type of order should serve as a basis for an enhanced charge.
- HB 301 could be strengthened by amending the measure to add an enhancement that would be applicable to violators who do not yet have a prior conviction, but who can be alleged to have repeatedly violated a domestic violence protective order issued under the same judicial case number on multiple occasions. The current bill would not provide an enhancement unless a final judgment of conviction has already been entered at the time of the new violation. It can take time for prosecutors to obtain a final judgment of conviction against an offender. Repeated violations of an order for protection are equally disruptive to victims’ lives when the violator has multiple cases or police reports at an earlier stage of the criminal process than conviction. Where it can be alleged that an individual has repeatedly violated a protective order on multiple occasions, the availability of an enhanced charge could help stop ongoing violations.

The County of Hawai‘i, Office of the Prosecuting Attorney remains committed to pursuing justice with integrity and commitment. For the foregoing reasons, the County of Hawai‘i, Office of the Prosecuting Attorney supports the passage of House Bill 301. Thank you for the opportunity to testify on this matter.



February 5, 2025

Members of the House Committee on Judiciary & Hawaiian Affairs:

Chair David A. Tarnas

Rep. Amy A. Perruso

Vice Chair Mahina Poepoe

Rep. Gregg Takayama

Rep. Della Au Belatti

Rep. Chris Todd

Rep. Elle Cochran

Rep. Diamond Garcia

Rep. Mark J. Hashem

Rep. Garner M. Shimizu

Rep. Kirstin Kahaloa

Re: HB 301 Relating to Domestic Abuse Protective Orders

Dear Chair Tarnas, Vice Chair Poepoe, and Members of the House Committee on Judiciary & Hawaiian Affairs:

The Hawai'i State Coalition Against Domestic Violence (HSCADV) addresses the social, political, and economic impacts of domestic violence on individuals, families, and communities. We are a statewide partnership of domestic violence programs and shelters.

On behalf of HSCADV and our 25 member programs statewide, I respectfully request this measure be **DEFERRED** and instead consider the changes proposed in HB176 and HB383.

We appreciate the intent of this bill and are grateful that the legislature is considering the impact of violations of protective orders.

This measure:

- increases the penalties for the conviction of a second or subsequent violation of a protective order from a misdemeanor to a Class C Felony;
- increases the minimum sentence of a conviction “in the nature of non-domestic abuse” to thirty days (Section 1(2)(A) and (C));
- increased the minimum sentence “in the nature of domestic abuse” to sixty days (Section 1(2)(B)) and thirty days after the first conviction of the same order that is “in the nature of non-domestic abuse” (Section 1(2)(D)); and
- for any subsequent violation after a second violation, a minimum sentence of no less than ninety days (Section 1(3)).

Our concerns:

- Making the second or subsequent violation of a protection order to a Class C felony and establishing minimum sentencing in the statute is in contradiction of HRS 706-660, which states, “The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669.” If the legislature wishes to pursue this pathway, perhaps it should refer this change to the Penal Code Review Committee.
- The statute makes a distinction between “non-domestic abuse” and “domestic abuse”. We have learned that this distinction relates to physical and non-physical abuse. We have codified coercive control in HRS 586-1 elevating the seriousness of non-physical violence and its impact on survivors. This measure should be updated to address the unnecessary bifurcation. HB176 and HB383 address such a change. Hence, our recommendation is that this measure be deferred and the other measures considered instead.

Thank you for the opportunity to testify on this important matter.

Sincerely,

Angelina Mercado, Executive Director

**HB-301**

Submitted on: 1/31/2025 4:39:25 PM

Testimony for JHA on 2/5/2025 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in support

**HB-301**

Submitted on: 2/5/2025 9:43:46 AM

Testimony for JHA on 2/5/2025 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dyani Cantu	Individual	Support	In Person

Comments:

I am testifying as an individual in support of HB301. I am a former domestic violence educator, case manager, and advocate for LGBTQ+ survivors.